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April 20, 2006

Mary F. Rupp, Esq.
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Supervisory Committee Audits
Advance Notice of Proposed Rulemaking

Dear Ms. Rupp:

U.S. Central Federal Credit Union ("U.S. Central") appreciates the opportunity to respond to the National Credit Union Administration's (the "NCUA's") recent Advance Notice of Proposed Rulemaking (the "Notice"). In the Notice, the NCUA requests public comment on whether and how to modify its Supervisory Committee audit rules to require credit unions to obtain an "attestation on internal controls" in connection with their annual audits; to identify and impose assessment and attestation standards for such engagements; to impose minimum qualifications for Supervisory Committee members; and to identify and impose a standard for the independence required of State-licensed, compensated auditors (collectively, the "Potential Requirements").

Although the Notice is addressed to natural person credit unions and corporate credit unions alike, the unique structure of, and regulatory and supervisory framework for, corporate credit unions justifies separate treatment for purposes of the Notice. Accordingly, this comment letter responds to the Notice only with respect to corporate credit unions, beginning with several general observations regarding the uniqueness of corporate credit unions.

General

The Notice acknowledges that there is no applicable statute that mandates the imposition of the Potential Requirements on credit unions. Rather, the NCUA is considering the imposition of the Potential Requirements in response to requirements imposed on other federally insured financial institutions by the Federal Deposit Insurance Corporation Improvements Act ("FDICIA"), and on public companies by the Sarbanes-Oxley Act ("Sarbanes-Oxley"). As the NCUA is aware, FDICIA and Sarbanes-Oxley were

respectively enacted to address the abuses that led to the bank and thrift institutions crisis of the late 1980s and the abuses at the heart of numerous scandals involving public companies during the late 1990s. Common causes of those abuses were weak controls and poor oversight by insufficiently independent directors and officers. Common results were financial losses to innocent taxpayers and/or investors and diminished public confidence. Exacerbating both the causes and effects of the abuses was the fact that other financial institutions and public companies both have a significant separation between owning stockholders and managing insiders.

The benefits of the Proposed Requirements are low. By their nature and structure alone, corporates are so distinct from banks and public companies that neither they nor their members nor their regulators have any need for, or would derive any benefit from, the Proposed Requirements.

- Corporates have no history of the abuse sought to be prevented by the Proposed Requirements**.** In the entire history of corporate credit unions, there have not been any reported abuses of the sort addressed by FDICIA or Sarbanes-Oxley. Neither American taxpayers nor the National Credit Union Share Insurance Fund (the "NCUSIF") has ever lost a dollar because of fraud, abuse, mismanagement, or waste at a corporate credit union.

- Corporates are closely monitored by their member-owners**.** Corporates' unique governance structure is both a major difference between them and banks and public companies and a major reason that there have been no such abuses among corporates. Corporates have a limited number of member-owners, from a few thousand to a few hundred, to (in the case of U.S. Central) a few dozen. In each case all or substantially all of those member-owners are other financial institutions that – as both investors and customers – have a vested interest in closely monitoring the corporate's operations and results, and who do so. Moreover, the directors of corporates are by and large executives of those same member-owner financial institutions and who possess a high degree of sophistication in financial matters.

- Corporates have no public investors or customers who need the protections of the Proposed Requirements**.** None of the members of U.S. Central, or of its member corporate credit unions, is a retail consumer or member of the investing public. Indeed, to maintain their status as "bankers' banks" with the Federal Reserve System, corporate credit unions are prohibited from conducting retail business. Thus, there is no "investing public" that must be protected from abuse. Rather, the effects of any such abuse would fall directly on the corporate's members who, as stated above, understand this fact and accordingly carefully monitor their corporate's operations and results.

- Corporates pose little or no risk to taxpayers or to the Share Insurance Fund**.** Notwithstanding the billions of dollars deposited with corporate credit unions, each shareholder is entitled to the $100,000 per shareholder NCUSIF insurance coverage limit. The most generous analysis of the NCUSIF's legal exposure to U.S. Central would be some $6 million at a time when U.S. Central's daily average net assets exceed $35 billion. While, this undoubtedly and justifiably leads to both heightened member scrutiny and increased NCUA oversight, it is nonetheless a fact that the failure of even the largest corporate would not result in a significant cost to the NCUSIF and that, therefore, a taxpayer bail-out of corporates is highly improbable.

- Corporates are subject to effective regulation and oversight**.** Congressional findings show that, prior to the respective enactments of FDICIA and Sarbanes-Oxley, banks and thrifts and public companies were subject to weak regulatory oversight that was seen as providing fertile ground for abuse. This simply is not the case for today's corporate credit unions. In addition to or as a result of the FDICIA requirements incorporated into the Federal Credit Union Act, all corporate credit unions:

    - are examined annually by the NCUA, and the largest corporate credit unions have resident examiners stationed by the NCUA;
    - are required to submit monthly call reports to the NCUA;
    - are required to have internal audit programs;
    - are required to prepare annual financial statements in accordance with generally accepted accounting principles; and
    - are required to obtain an annual independent audit of such financial statements performed in accordance with generally accepted auditing standards by an independent certified public accountant.

Given that corporates have no history of abuse, are closely monitored by their member-owners, have no public investors who need additional protection, pose little if any risk to taxpayers, and are already effectively regulated, the Proposed Requirements provide little if any benefit to corporates, their members, or their regulators and are, therefore, unnecessary for corporate credit unions.

The costs of the Proposed Requirements are unjustifiably high. Given that the Proposed Requirements provide little, if any, benefit to corporates, their members, and their regulators, the Proposed Requirements present an unjustifiably costly burden on corporate credit unions.

It has been demonstrated that for banks and public companies the costs of complying with comparable reporting requirements are staggering. A 2005 study commissioned by the Big 4 accounting firms and prepared by CRA International evaluated the costs associated with implementing the attestation requirements of Sarbanes-Oxley. The study

included a sampling of each accounting firms' Fortune 1000 clients with market capitalization over $700 million ("Larger Companies"), as well as a study of the costs for smaller public companies with market capitalization between $75 million and $700 million ("Smaller Companies"). The study noted that the average per-company Sarbanes-Oxley Section 404 total implementation costs for Larger Companies was $7.8 million. The survey data for Smaller Companies indicated that they incurred average first year implementation costs of $1.5 million.

The FDIC recently acknowledged that "compliance with the audit and reporting requirements of part 363 have and will continue to become more burdensome and costly." This was the stated rationale for the FDIC's recent increase in the threshold for internal control assessments from $500 million to $1 billion.

Given that corporate credit unions operate on much narrower margins than do similarly sized banks and publicly traded companies, the burden of the Proposed Requirements would be devastating. Such costs cannot be justified in light of the negligible, if any, benefits to be derived from imposing the Proposed Requirements on corporates.

Specific Comments

The above general comments form the basis of each of the following specific responses.

A. Internal Control Assessment and Attestation

1. Should part 715 require, in addition to a financial statement audit, an "attestation on internal controls" over financial reporting above a certain minimum asset size threshold? Explain why or why not.

Not for corporates, because the benefit of a separate attestation regarding a corporate's internal controls over financial reporting does not outweigh its significant cost.

2. What minimum asset size threshold would be appropriate for requiring, in addition to a financial statement audit, an "attestation on internal controls" over financial reporting, given the additional burden on management and its external auditor? Explain the reasons for the threshold you favor.

There should be no such requirement for corporate credit unions at any threshold because of the negligible benefit in comparison to the significant cost.

3. Should the minimum asset size threshold for requiring an "attestation on internal controls" over financial reporting be the same for natural person credit unions and corporate credit unions? Explain why.

There should be no such requirement for corporate credit unions at any threshold because of the negligible benefit in comparison to the significant cost. We take no position as to whether or not this requirement should be imposed on any natural person credit unions or, if imposed, at what threshold.

4. Should management's assessments of the effectiveness of internal controls and the attestation by its external auditor cover all financial reporting, (i.e., financial statements prepared in accordance with GAAP and those prepared for regulatory reporting purposes), or should it be more narrowly framed to cover only certain types of financial reporting? If so, which types?

There should be no such requirement for corporate credit unions, as to either all financial reporting or limited to only certain types of reporting, because of the negligible benefit in comparison to the significant cost.

5. Should the same auditor be permitted to perform both the financial statement audit and the "attestation on internal controls" over financial reporting, or should a credit union be allowed to engage one auditor to perform the financial statement audit and another to perform the "attestation on internal controls?" Explain the reasons for your answer.

There should be no such requirement for corporate credit unions, regardless by whom performed, because of the negligible benefit in comparison to the significant cost.

6. If an "attestation on internal controls" were required of credit unions, should it be required annually or less frequently? Why?

There should be no such requirement for corporate credit unions, regardless of the any frequency, because of the negligible benefit in comparison to the significant cost.

7. If an "attestation on internal controls" were required of credit unions, when should the requirement become effective (i.e., in the fiscal period beginning after December 15 of what year)?

There should be no such requirement for corporate credit unions for any fiscal period because of the negligible benefit in comparison to the significant cost.

B. Standards Governing Internal Control Assessments and Attestations

8. If credit unions were required to obtain an "attestation on internal controls," should part 715 require that those attestations, whether for a natural person or corporate credit union, adhere to the PCAOB's AS 2 standard that applies to public companies, or to the AICPA's revised AT 501 standard that applies to non-public companies? Please explain your preference.

U.S. Central does not believe that the attestation on internal controls requirement should be extended to corporate credit unions.

9. Should NCUA mandate COSO's Internal Control – Integrated Framework as the standard all credit union management must follow when establishing, maintaining and assessing the effectiveness of the internal control structure and procedures, or should each credit union have the option to choose its own standard?

Such a requirement is unnecessary for corporate credit unions and should not be imposed. Corporates recognize that industry standards and best practices for internal control structures and procedures continue to evolve. Both the NCUA and corporate credit unions would benefit from the corporate having the flexibility to adopt and implement any recognized internal control framework.

C. Qualifications of Supervisory Committee Members

10. Should Supervisory Committee members of credit unions above a certain minimum asset size threshold be required to have a minimum level of experience or expertise in credit union, banking or other financial matters? If so, what criteria should they be required to meet and what should the minimum asset size threshold be?

Such a requirement is unnecessary for corporate credit unions and should not be imposed. First, it is already the case that corporate credit union supervisory committee members typically have significant levels of experience and expertise. Second, it should be noted that corporate credit union supervisory committees not only supervise the work of external accountants and internal auditors, but also ensure that the corporate's entire operations are conducted in a safe and effective manner. Qualifications for service on a corporate credit union supervisory committee should be sufficiently flexible to permit the committee to fulfill all its responsibilities. Those qualifications for service should not assume or require that all supervisory committee members have similar experience or expertise. For example, an individual with strong information technology experience or expertise but without a background in other credit union, banking or other financial matters, could nonetheless significantly improve the effectiveness of a corporate credit union supervisory committee in overseeing all aspects of the corporate's operations, especially during a period when greater emphasis is being placed on technological innovation.

11. Should Supervisory Committee members of credit unions above a certain minimum asset size threshold be required to have access to their own outside counsel? If so, at what minimum asset size threshold?

The supervisory committee of every corporate credit union should have a clearly articulated right to retain independent legal counsel whenever the supervisory committee

in its sole judgment deems access to such counsel to be necessary or appropriate. There is no sound rationale, however, for requiring a supervisory committee to retain such counsel. On the contrary, a mandatory retainer of outside counsel could simply lead to waste of the corporate's assets.

12. Should Supervisory Committee members of credit unions above a certain minimum asset size threshold be prohibited from being associated with any large customer of the credit union other than its sponsor? If so, at what minimum asset size threshold?

As applied to corporate credit unions, such a requirement is unnecessary and, perhaps, would be unworkable. Corporate credit unions, generally, and U.S. Central, in particular, have considerably smaller membership bases than natural person credit unions from which to draw directors and supervisory committee members. Moreover, in the case of corporate credit unions, representatives of larger members would have a vested interest in ensuring an appropriate control environment and transparent reporting. The NCUA's existing requirements for handling conflicts of interest involving corporate credit union officials is sufficient to address this issue.

13. If any of the qualifications addressed in questions 10, 11 and 12 above were required of Supervisory Committee members, would credit unions have difficulty in recruiting and retaining competent individuals to serve in sufficient numbers? If so, describe the obstacles associated with each qualification.

Given that corporate credit unions typically draw supervisory committee members from the executive ranks of their member financial institutions, corporates may have an advantage over natural person credit unions in meeting the qualifications addressed in questions 10, 11, and 12 above. Nonetheless, for the reasons cited above, the qualifications are unnecessary for corporate credit union supervisory committees.

D. Independence of State-Licensed, Compensated Auditors

14. Should a State-licensed, compensated auditor who performs a financial statement audit and/or "internal control attestation" be required to meet just the AICPA's "independence" standards, or should they be required to also meet SEC's "independence" requirements and interpretations? If not both, why not?

The AICPA's independence standards are sufficient for corporate credit unions. The SEC's standards are specifically designated for auditors of publicly-traded companies, while the AICPA has, in cooperation with the SEC, set forth standards for auditors of non-publicly traded companies, such as corporate credit unions.

E. Audit Options, Reports and Engagements

15. Is there value in retaining the "balance sheet audit" in existing §715.7(a) as an audit option for credit unions with less than $500 million in assets?

This option is inapplicable to corporate credit unions.

16. Is there value in retaining the "Supervisory Committee Guide audit" in existing §715.7(c) as an audit option for credit unions with less than $500 million in assets?

This option is inapplicable to corporate credit unions.

17. Should part 715 require credit unions that obtain a financial statement audit and/or an "attestation on internal controls" (whether as required or voluntarily) to forward a copy of the auditor's report to NCUA? If so, how soon after the audit period-end? If not, why not?

As discussed above, the attestation on internal controls should not be required for corporate credit unions.

18. Should part 715 require credit unions to provide NCUA with a copy of any management letter, qualification, or other report issued by its external auditor in connection with services provided to the credit union? If so, how soon after the credit union receives it? If not, why not?

NCUA Rules and Regulations Part 704.15 already requires that "[a] copy of … all communications that are provided to the corporate credit union by the external auditor, shall be submitted to the OCCU Director within 30 calendar days after receipt by the board of directors. Accordingly, corporate credit unions are already subject to the requirement to provide the NCUA with a copy of any management letter, qualification or other report issued by its external auditor.

19. If credit unions were required to forward external auditors' reports to NCUA, should part 715 require the auditor to review those reports with the Supervisory Committee before forwarding them to NCUA?

Under NCUA Rules and Regulations Part 704.15, this requirement already applies to corporate credit unions.

20. Existing part 715 requires a credit union's engagement letter to prescribe a target date of 120 days after the audit period-end for delivery of the audit report. Should this period be extended or shortened? What sanctions should be imposed against a credit union that fails to include the target delivery date within its engagement letter?

This provision is inapplicable to corporate credit unions.

21. Should part 715 require credit unions to notify NCUA in writing when they enter into an engagement with an auditor, and/or when an engagement ceases by reason of the auditor's dismissal or resignation? If so in cases of dismissal or resignation, should the credit union be required to include reasons for the dismissal or resignation?

No. If the NCUA desires such information from corporate credit unions, it should consider requiring each corporate to include the name of its external auditors as part of its 5310 Report. Such an approach would be much more efficient for the NCUA and more cost-effective for corporates than establishing and maintaining a separate reporting mechanism.

22. NCUA recently joined in the final Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters, 71 FR 6847 (Feb. 9, 2006). Should credit union Supervisory Committees be prohibited by regulation from executing engagement letters that contain language limiting various forms of auditor liability to the credit union? Should Supervisory Committees be prohibited from waiving the auditor's punitive damages liability?

Because interagency guidance has already been issued and adequate enforcement vehicles are already available to the NCUA, additional regulation in this area would be redundant and, therefore, is unnecessary.

Closing

Again, U.S. Central appreciates the opportunity to comment in response to the Notice. We hope that our comments will assist the NCUA in determining the applicability of the Proposed Requirements to corporate credit unions. If you have any questions regarding the foregoing, or if you require additional information, please contact François G. Henriquez, II, U.S. Central's Senior Vice President and General Counsel, at fhenriquez@uscentral.coop, or 913-227-6035, or Sandra K. Brady, U.S. Central's Vice President, Internal Audit and Compliance, at sbrady@uscentral.coop, or at 913-227-6362.

Respectfully,

Francis Lee
President and CEO